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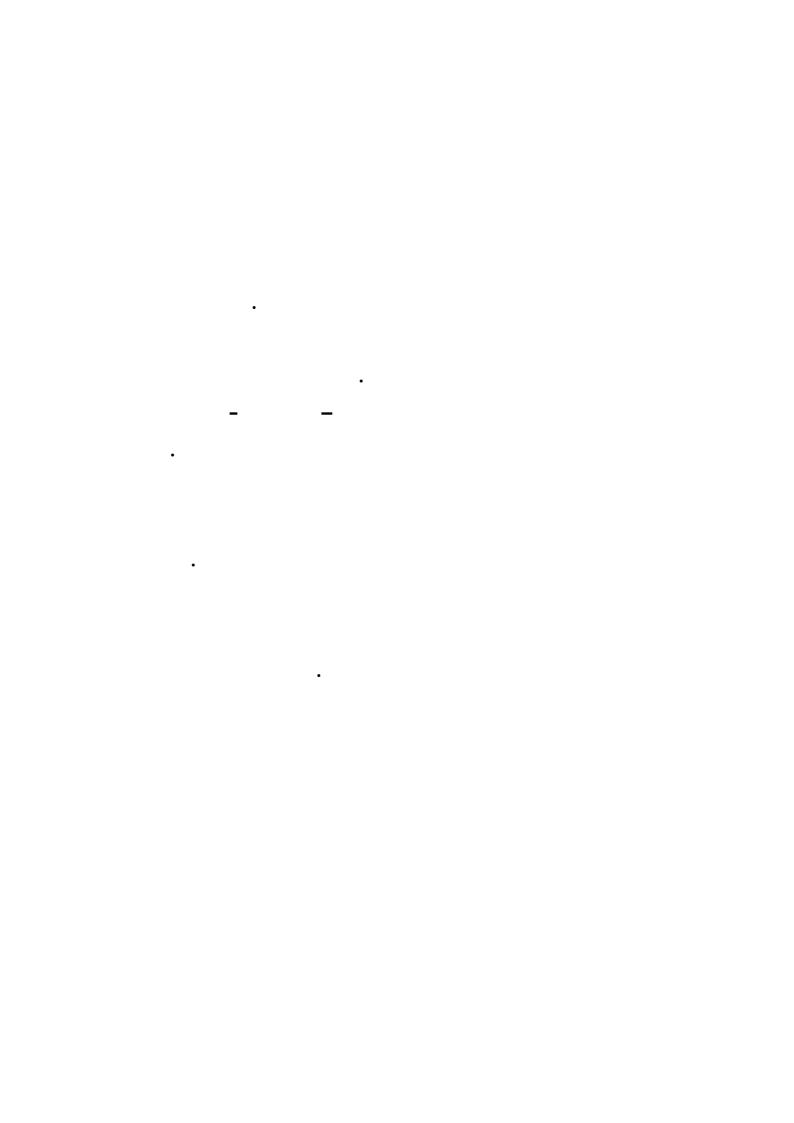
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responsabilité, étude de sociologie, p 37

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- Paul fauconnet : la :50

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Paul fauccennent : opcit p 36 - Paul fauccennent : opcit p 37 -

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Paul fauccennent : opcit, p .19 :

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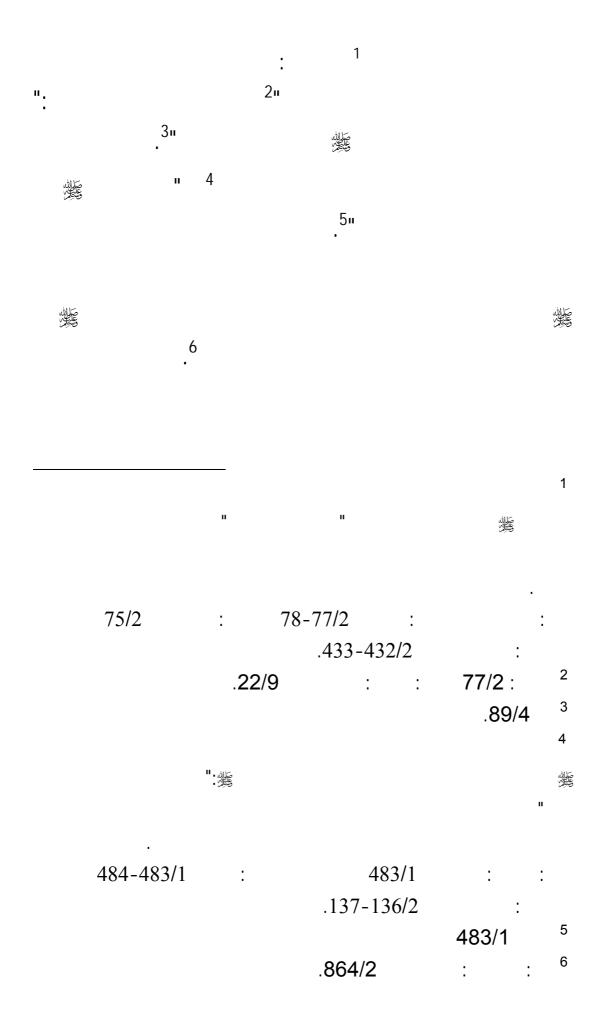
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Penal responsibility in Islamic jurisprudence and law summary research main points. (The Algerian law model).

1- Every researcher might notice the importance of (penal responsibility), especially if jurists¹ had approached it in sentenced chapter. Also jurisprudents² did the same in many aspects of several questions. Both of them were obliged to enumerate responsibility conditions particularly in penal matters.

Legists³ dealt too with that topic when they felt in need of setting rules for such topics during the renaissance.

- **2-** The most important idea treated in the present study is:
- **a-** who can be considered responsible in both Islamic and positive law.
- **b-** Points of resemblance and difference.
- **3-** Penal responsibility is one of the common topics between jurists, legists and jurisprudents. That makes its study a mixture of several sciences and so it's rich in jurisprudential issues.
- **4-** To shed light on the notion of penal responsibility we should explain terms indicating it such as penal responsibility and others.
- 5- Both Islamic jurisprudence and positive law consider that penal responsibility is based on personal aptitude at assuming it. Even though, jurisprudents and legists are disagreed about the two

¹ Jurists=

² Jurisprudents=

³ Legist=

kind of aptitude, for in jurisprudence the aptitude is derided on two kinds:

- **a-** obligatory: and it has its own judgments.
- **b-** Performance: it represents the extreme phase and has its own judgments.

While we can see such division in civil law but not in penal law. Also, system divides the aptitude phases differently.

- **6-** Both jurisprudence and law agree with each other that aptitude has two but not three conditions: reason and free choice. In spite of difference in meaning in view of the fact that legists call reason by perception.
- But in fact it's less than reason- and free choice by will- even if it involves clarifying the term of will is it a free will imposed as one main condition in penal responsibility or forethought with a malice in the moral corner.
- 7- Such condition i-e free choice must from a large debate between Islamic and positive law. Finally, the two systems admit that it consists on personal freedom of words and deed.
- **8-** There is a debate concerning the palace of aptitude between deed canter the abstract corner "and the doer penal responsibility". While Islamic jurisprudence considers the penal aptitude as a corner stone of the deed, the doer and penalty.
- **9-** Penal responsibility has many degrees from intention to error in both Islamic jurisprudence and law so, penal responsibility is derided in both systems, to intentional, for all sorts of intention are furnished, and unintentional, for all sorts of error are furnished. But the difference between two systems is about intention and will fullness because law

- distinguished the two terms whereas Islamic jurisprudence didn't.
- 10- Occurrence of any kind of fault like ignorance may disturb the main cause of penal responsibility and deviate it from its basis.
- 11- Islamic jurisprudence divides preventives into divine or non-acquired like madness and acquired like drunk ness. Can be also classified into reason and choice preventives.
- 12- Scholars disagree over juvenility, some consider it as casual while others see it as a preventive. "It is often included as casual".
- 13- Law and Islamic jurisprudence disagree about majority signes in penal responsibility between natural signes age.
- 14- Islamic jurisprudence and law disagree over dividing event responsibility's phases in penal field.
- 15- Both Islamic jurisprudence and law consider madness as a preventive even through law put on the same level madness and other mental disabilities contrary to Islamic jurisprudence which makes difference in degree and considers that it stays the punishment execution and cancel the responsibility.
- 16- Madness while committing the crime is a preventive to penal responsibility for both Islamic jurisprudence and law, even if irresponsibility necessitates garantees.
- Notice that jurisprudents disagree over who bears indemnity: The families as the majority see or taking from the mad's possessions as ALSHAFISTS.
- 17- Law and jurisprudence disagree about emergency madness just after committing the crime in some judgments.

- **18-** Drunkenness is a preventive even though Islamic jurisprudence considers it as a crime by itself and desenes a punishment whereas law does not do the same except if it lead to a crime.
- 19- Jurisprudents disagree over to what extent drunk is responsible or not. Nevertheless, his responsibility preponderats because drunkenness is casual and does prevent the cause of responsibility and goes in a short time. Legists see the same but the responsibility for those differs and grades according to presence of intention or not. Because if penal intention exists the responsibility will be intentional depending of its kind i-e direct or likely. But if not, the responsibility will be unintentional because of error even though fault might accuse on drunk responsibility in both systems if there are:
- Ignorance
- Permission
- forcing
- **20-** both forcing and nessicity are considered as preventives of responsibility. Although jurisprudence and law disagree over the quality of forcing for law considers that it forcing cancels the free choice whereas jurisprudence see that it cancels accepting and damages free choice without cancelling it.
- 21- Islamic jurisprudence while speaking about forcing mixes it with nessicity and so stays forcing as casual when speaking of sentenced chapters for jurists. Also jurisprudents do the some at exposing jurisprudence questions. Nessicity then is not mentioned.
- 22- Forcing prevents responsibility if accomplishes its conditions either in law or in Islamic

jurisprudence. The two systems agree on deciding forcing into abstract and concrete.

23- The effect of forcing differ in Islamic jurisprudence and law since it does a preventive once and cause of permission once again and it is the same for nessicity while providing its control.